

STATEMENT OF CONSIDERATION RELATING TO
401 KAR 5:002 Amended after comments

Energy and Environment Cabinet
Department for Environmental Protection
Division of Water

I The public hearing on 401 KAR 5:002, 5:005, 5:055, 5:060, 5:065, and 5:080, scheduled for May 27, 2009, at 10:00 a.m. at 300 Fair Oaks Road, was held and written comments were received during the public comment period.

II The following people attended the hearing:

<u>Name and Title</u>	<u>Affiliation</u>
Teena Halbig, Vice President	Floyds Fork Environmental Association
Jack Bender	Kentucky League of Cities
Hank Graddy, Attorney	Graddy and Associates
Aloma Dew, Regional Representative	Sierra Club
David Kaelin, Conservationist	
Betsy Bennett, Conservation Chair	Sierra Club, Cumberland Chapter
Joan Lindop	
Rick Clewett	Sierra Club

The following people submitted written comments:

<u>Name and Title</u>	<u>Affiliation</u>
Teena Halbig, Vice President	Floyds Fork Environmental Association
Bob Weiss, Executive Vice President	Home Builders Association of Kentucky
Timothy J. Hagerty, Chair, Environmental Policy Committee	Kentucky Chamber
Emily Harkenrider	Legislative Research Commission
Jack Bender	Kentucky League of Cities
Tom FitzGerald, Director	Kentucky Resources Council
Hank Graddy, Chair	Kentucky Watershed Watch
Betsy Bennett and Wallace McMullen, Conservation Chairs	Sierra Club, Cumberland Chapter and Louisville Group

- III** The following people from the promulgating administrative body responded to the written comments:

<u>Name and Title</u>	<u>Affiliation</u>
Peter T. Goodman, Assistant Director	Division of Water
Jory Becker, Branch Manager	Division of Water
Larry Sowder, Supervisor	Division of Water
Abby Powell, Regulations Coordinator	Division of Water

IV Summary of Comments and Responses for 401 KAR 5:002

(1) Subject Matter: Technical Amendments

(a) Comment: Emily Harkenrider (Legislative Research Commission)

Ms. Harkenrider suggested several technical amendments to the regulations, including formatting, grammar, and drafting suggestions.

(b) Response: The agency agrees and has made the suggested changes.

(2) Subject Matter: Public Notice and Public Hearing

(a) Comment: Teena Halbig (Floyds Fork Environmental Association), Gene Nettles

FFEA and Mr. Nettles believe that there was not adequate opportunity to comment on the proposed amendments to the administrative regulation and that the public hearing was at an inconvenient time and violated the spirit of the Kentucky Open Meetings Laws.

(b) Response: The cabinet tries to make reasonable accommodations for the public to be included in the process; however, budgetary considerations have made it necessary to hold some meetings during work hours. The agency sent notice on April 15, 2009, via US mail, e-mail, and internet posting that regulations were filed on April 14. The notice included the date and time of public hearing and contact information necessary for submitting written comments. The agency met all the requirements of KRS 13A for the public process.

(3) Subject Matter: Statutory Authority

(a) Comment: Tom FitzGerald (Kentucky Resources Council)

KRS 224.10-110 should be added to the statutory authority section.

(b) Response: The agency agrees and has made the change.

(4) Subject Matter: Deleted definitions

(a) Comment: Teena Halbig (Floyds Fork Environmental Association), Betsy Bennett (Sierra Club), Hank Graddy (Kentucky Watershed Watch)

FFEA, Sierra Club, and Kentucky Watershed Watch identify several definitions that have been removed from this administrative regulation and request justification for their removal.

(b) Response: The agency has removed definitions for terms that do not appear in the regulation. Many of these terms have been removed because the corresponding regulations have been re-codified to 401 KAR Chapter 10 and the terms now appear in that chapter, 10:001. Many terms no longer appear in the chapter 5 regulations because the agency proposes to cite federal regulations, rather than reproduce the narrative of the

federal regulations. Terms that now appear only in 401 KAR Chapter 10 include: “acute criteria”, “acute toxicity”, “acute toxicity unit”, “adversely affect”, “balanced indigenous community”, “chronic criteria”, “cold water aquatic habitat”, “IC25”, “impairment”, “indigenous aquatic community”, “LC₁”, “outstanding state resource water”, “primary contact recreation”, “secondary contact recreation”, “toxic substance”, and “warm water aquatic habitat”. Terms that no longer appear in the chapter include: “average monthly discharge limitations”, “average weekly discharge limitations”, “domestic water supply”, “industrial user”, “intended use plan”, and “karst feature”.

(5) Subject Matter: Concern about citing federal definitions.

(a) Comment: Teena Halbig (Floyds Fork Environmental Association)

FFEA identifies several terms that now cite the federal definitions and expresses concern that the agency is removing the definitions or significantly altering them. FFEA encourages consistency in the citation of federal definitions throughout 401 KAR 5:002.

(b) Response: The amendments to this administrative regulation include citations to the federal definitions, including for the terms “major municipal separate storm sewer outfall”, “major outfall”, “MS4”, and “pretreatment”. The Division agrees that it would be appropriate to cite the federal regulations where possible to avoid potential inconsistencies. Changes have been made to 5:002, where possible, to cite federal definitions.

(6) Subject Matter: Support for citing federal definitions

(a) Comment: Betsy Bennett (Sierra Club), Hank Graddy (Kentucky Watershed Watch)

Sierra Club and Kentucky Watershed Watch generally support striking the narrative from Kentucky’s regulations and simply referencing the federal citations.

(b) Response: The agency appreciates the support of Sierra Club and Kentucky Watershed Watch.

(7) Subject Matter: Citation style for the Clean Water Act

(a) Comment: Teena Halbig (Floyds Fork Environmental Association), Betsy Bennett (Sierra Club), Hank Graddy (Kentucky Watershed Watch)

FFEA, Sierra Club, and Kentucky Watershed Watch express concern about the citation style for the Clean Water Act, specifically as found in the definitions for “date of program approval”, “effluent limitations guideline”, “municipality”, “national pretreatment standard”, “regional facility plan”, and “regional planning agency.”

(b) Response: The amendments to the definitions remove references to sections of the Clean Water Act, but include the citations to the United States Code and corresponding parts. KRS 13A.222 requires this style of citation. Although the citation style has changed, the substance of the definition has not been altered.

(8) Subject Matter: “Animal feeding operation”

(a) Comment: Betsy Bennett (Sierra Club), Hank Graddy (Kentucky Watershed Watch)

Sierra Club and Kentucky Watershed Watch oppose the definition of AFOs because they believe it to be inconsistent with the federal definition.

- (b) **Response:** This definition is consistent with the federal definition for “animal feeding operation.”
- (9) **Subject Matter: “Animal unit”**
- (a) **Comment: Betsy Bennett (Sierra Club), Hank Graddy (Kentucky Watershed Watch)**
Sierra Club and Kentucky Watershed Watch support removing the definition for “animal unit”.
- (b) **Response:** The agency appreciates the support of Sierra Club and Kentucky Watershed Watch.
- (10) **Subject Matter: “Best Management Practices”**
- (a) **Comment: Teena Halbig (Floyds Fork Environmental Association)**
Does the citation to KRS 224.71-100 include as defined in the Agriculture Water Quality Act?
- (b) **Response:** The citation to the statute does refer to the definition for “best management practices” as it pertains to the Agriculture Water Quality Act.
- (11) **Subject Matter: “Concentrated animal feeding operation”**
- (a) **Comment: Betsy Bennett (Sierra Club), Hank Graddy (Kentucky Watershed Watch)**
Sierra Club and Kentucky Watershed Watch oppose the change to the definition for CAFOs because the definition is contradicting the federal definition when the agency adds the requirement of a discharge or intent to discharge on page 51 of 401 KAR 5:005.
- (b) **Response:** The definition for CAFO is consistent with the federal regulation.
- (12) **Subject Matter: “Continuous facility discharge”**
- (a) **Comment: Teena Halbig (Floyds Fork Environmental Association)**
Would “continuous” exclude an operation that sells animals/fowl and is devoid of animals/fowls for a period of time?
- (b) **Response:** The term “continuous facility discharge” is intended to apply to any facility that discharges, not necessarily agricultural operations. The definition for “facility” is defined on page 18, Section 1(47), and is specified to a “sewage system”.
- (13) **Subject Matter: “Continuous facility discharge”**
- (a) **Comment: Tom FitzGerald (Kentucky Resources Council)**
Insertion of “facility” in the definition is redundant, since it is clear that the discharge is from a facility.
- (b) **Response:** Although the addition of “facility” may be understood by reading the definition, the term is used as “continuous facility discharge” in 401 KAR 5:045.

- (14) **Subject Matter: “Conventional pollutant”**
(a) **Comment: Tom FitzGerald (Kentucky Resources Council), Jack Bender (Kentucky League of Cities)**
KRC and KLC request that “E. coli” be added to the definition of conventional pollutant.
(b) **Response:** The agency agrees and has made the change.
- (15) **Subject Matter: “Design flow”**
(a) **Comment: Jack Bender (Kentucky League of Cities)**
The reference to “performance requirements” in the definition for “design flow” is somewhat vague, but this may not present a concern if it is consistent with typical engineering understanding of design flow of WWTPs. Please clarify your intent.
(b) **Response:** The agency intends this definition to be consistent with typical engineering standards.
- (16) **Subject Matter: Interstate Agency**
(a) **Comment: Bob Weiss (Home Builders Association of Kentucky)**
HBAK believes that “interstate agency” should be removed from the definition section because the addition of agencies outside of the federal/state relationship will lead to inconsistencies with federal regulations and will place Kentucky’s business community at a disadvantage when competing on a national basis
(b) **Response:** The agency must comply with Kentucky statutes, including KRS 224.18-100. As member of ORSANCO, Kentucky must assure that discharges to the Ohio River do not cause adverse impacts on its usage by other member states. The term “interstate agency” is used in this chapter, so we must define it.
- (17) **Subject Matter: “Large animal feeding operation”**
(a) **Comment: Betsy Bennett (Sierra Club), Hank Graddy (Kentucky Watershed Watch)**
Sierra Club and Kentucky Watershed Watch oppose adding the term “large animal feeding operation” because they believe it is contrary to the federal regulatory program. Additionally, if the term remains, the agency should correct the typo regarding swine populations.
(b) **Response:** This definition is consistent with the federal definition for “animal feeding operation.”
- (18) **Subject Matter: “Large municipal separate storm sewer system”**
(a) **Comment: Betsy Bennett (Sierra Club), Hank Graddy (Kentucky Watershed Watch)**
Sierra Club and Kentucky Watershed Watch ask why this term is being deleted.
(b) **Response:** The term “large municipal separate storm sewer system” no longer appears in the Kentucky regulations because we are now citing the federal regulations. 401 KAR 5:060 Section 8, for storm water discharges, cites 40 C.F.R. 122.26, which contains the definition for “large municipal separate storm sewer system”.

- (19) **Subject Matter: “Manure”**
- (a) **Comment: Betsy Bennett (Sierra Club), Hank Graddy (Kentucky Watershed Watch)**
Sierra Club and Kentucky Watershed Watch support the addition of a definition for “manure”.
- (b) **Response:** The agency appreciates the support of Sierra Club and Kentucky Watershed Watch.
- (20) **Subject Matter: “Major industry”**
- (a) **Comment: Teena Halbig (Floyds Fork Environmental Association)**
Changing the “and” to “or” significantly changes which entities are considered “major industry”.
- (b) **Response:** The agency agrees that changing “and” to “or” changes the categorization criteria for “major industry” to a more appropriate measure. In the previous version of the definition, the discharger would have to be engaged in commercial activities including the entire subsequent list. By changing the conjunction to “or”, a discharger may be considered a “major industry” by engaging in any one of the commercial activities listed.
- (21) **Subject Matter: “Nonconventional pollutant”**
- (a) **Comment: Jack Bender (Kentucky League of Cities), Timothy Hagerty (Kentucky Chamber)**
Under this definition, priority pollutants are considered nonconventional pollutants, which could result in regulatory consequences different from the CWA. The term should exclude toxic pollutants, which should not be considered nonconventional pollutants.
- (b) **Response:** The agency agrees that the definition provided for “nonconventional pollutant” may be confusing. After a search of the regulations, the agency has determined that the term no longer appears in the chapter and has removed it from 5:002.
- (22) **Subject Matter: “Nutrient management plan”**
- (a) **Comment: Betsy Bennett (Sierra Club), Hank Graddy (Kentucky Watershed Watch)**
Sierra Club and Kentucky Watershed Watch oppose the deletion of “in a manner that does not cause environmental harm” from the definition of “nutrient management plan.”
- (b) **Response:** The deleted phrase introduces a “rule” into the definitions regulation, which is prohibited by KRS 13A. The agency believes that the requirements for a nutrient management plan are laid out elsewhere in the corresponding regulations and removing this phrase does not change the function of a nutrient management plan.
- (23) **Subject Matter: “Owner”**
- (a) **Comment: Jack Bender (Kentucky League of Cities), Timothy Hagerty (Kentucky Chamber), Bob Weiss (Home Builders Association of Kentucky)**
“Owner” is much too broad. As defined the term could include corporate stockholders or others which would be inappropriate in these regulations.
- (b) **Response:** The agency agrees that the definition may be too broad and has narrowed the scope in the amended regulation.

(24) Subject Matter: “Operator”

(a) Comment: Jack Bender (Kentucky League of Cities), Timothy Hagerty (Kentucky Chamber)

The definition of operator is overly-broad and would include persons who have no authority to make management decisions regarding the facility or activity. The term “person” should also be defined with reference to the definition in KRS 224.01-010.

(b) Response: The agency needs to maintain the definition in order to sufficiently capture the variety of programs regulated under this chapter. The statutory definition for “person” applies without its duplication in this regulation.

(25) Subject Matter: “Pass Through”

(a) Comment: Jack Bender (Kentucky League of Cities)

The definition of “pass through” has been deleted, but for some reason the federal definition has not been included in the regulation. Pass through should be defined with reference to the federal definition in order to prevent any ambiguity as to the scope of this term as used in the pretreatment regulations.

(b) Response: The term “pass through” does not appear in the regulations in chapter 5. KRS 13A prohibits a regulation from defining a term that is not used in the regulation. The term is defined in the federal regulation cited in 401 KAR 5:057.

(26) Subject Matter: CAFOs and “Point source”

(a) Comment: Teena Halbig (Floyds Fork Environmental Association)

Is KDOW removing CAFOs as a “Point Source”?

(b) Response: The agency has not removed CAFOs from the definition of point source. The regulation simply cites the definition in federal code, which includes CAFOs.

(27) Subject Matter: “Recurring”

(a) Comment: Jack Bender (Kentucky League of Cities)

The word recurring is not defined in the regulations, although it is used in the definition of “excessive infiltration” and “excessive inflow”.

(b) Response: The agency agrees with KLC and has amended the regulation to specify that recurring means two times in a consecutive 12-month period, in regards to sanitary sewer overflow.

(28) Subject Matter: “Regional facility”

(a) Comment: Jack Bender (Kentucky League of Cities)

KLC believes that the amendment to “regional facility” creates a restriction on the scope of regional facilities, which appears to be desirable as it would exclude private facilities from being considered a “regional facility.”

(b) Response: The agency did not intend, and does not believe it did, substantively amend the definition. The change was made to remove a “rule” (shall be) from the definition, to comply with the drafting requirements of KRS 13A.

- (29) **Subject Matter: “Regional planning agency”**
(a) **Comment: Jack Bender (Kentucky League of Cities)**
KLC believes that this term has been amended to include those agencies that develop plans under the CWA relating to wastewater collection, transportation, or treatment for a particular area. They ask that the agency confirm this is not intended to broaden the definition of Regional Planning Agency to include additional entities.
(b) **Response:** The agency did not intend, and does not believe it did, substantively amend the definition. The change was made to remove a “rule” (shall be) from the definition, to comply with the drafting requirements of KRS 13A.
- (30) **Subject Matter: “Sinkhole”**
(a) **Comment: Teena Halbig (Floyds Fork Environmental Association)**
FFEA identifies “sinkhole” as a term for which a federal definition exists, but the agency has not cited the federal definition. She requests an explanation for the inconsistencies.
(b) **Response:** The agency was unable to locate a definition for “sinkhole” in federal regulations.
- (31) **Subject Matter: “Significant industrial user”**
(a) **Comment: Teena Halbig (Floyds Fork Environmental Association)**
FFEA asks if the federal definition for “significant industrial user” includes “newly emerging contaminants of concern”. If it does not, FFEA encourages the agency to include “newly emerging contaminants of concern”.
(b) **Response:** The federal regulation does not include “newly emerging contaminants of concern”. The agency has an obligation to enforce the federal program, which it has done by incorporating federal definitions.
- (32) **Subject Matter: “Waters of the Commonwealth” for “Waters of the U.S.”**
(a) **Comment: Laura Knoth (Kentucky Farm Bureau Federation), Jack Bender (Kentucky League of Cities)**
KFBB and KLC object to the substitution of “Waters of the Commonwealth” for “Waters of the U.S.” in the definition for “storm water discharge associated with small construction activity”, Section 1(157).
(b) **Response:** The agency believes this definition satisfies KRS 224, which instructs the cabinet to regulate Waters of the Commonwealth. 401 KAR 5:055 has been amended after comment to confine the scope of the KPDES regulations to “discharges that are regulated by the US EPA under the Clean Water Act, Section 402.”
- (32) **Subject Matter: “Underground injection control well”**
(a) **Comment: Jack Bender (Kentucky League of Cities)**
The term has been defined as a well “used for the emplacement of fluids into the subsurface.” This is a significantly broader definition and could lead to releases from tanks and containers and basins that migrate to the subsurface even if one would normally not consider such releases to be a “control well”. Please provide clarification of the intent of this amended definition.
(b) **Response:** The agency intended to clarify that underground injection control well that is regulated under the underground injection control program, established in 40 C.F.R. 144.

(33) Subject Matter: Regulatory Impact Analysis

(a) Comment: Teena Halbig (Floyds Fork Environmental Association)

FFEA questions the cited statutory authority as stated in the Regulatory Impact Analysis (2)(c). FFEA believes that the agency has removed key language from the regulation, “KRS 224.10-100 requires the cabinet to develop and conduct a comprehensive program for the management of water resources and to provide for the prevention, abatement, and control of water pollution.”

(b) Response: The cited phrase, “provide for the prevention, abatement, and control of water pollution”, exists in the regulation as part of the Necessity, Function, and Conformity clause. It appears on page 1, lines 13-15.

(34) Subject Matter: Federal Mandate Analysis

(a) Comment: Teena Halbig (Floyds Fork Environmental Association)

FFEA requests that the agency provide a response to the Federal Mandate Analysis Comparison, Question 5.

(b) Response: Questions 5 calls for “Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements.” The agency responded to question 4 that there are no stricter requirements than those mandated by federal law. KRS 224.10-100 prohibits the agency from developing a program that is more stringent than the federal law, and the Clean Water Act prohibits states from developing a program that is less stringent than federal law.

V Summary of Statement of Consideration and Action Taken by Promulgating Administrative Body

The Division of Water reviewed the comments and, as a result, is amending the administrative regulation as follows:

Page 1

RELATES TO

Line 7

After “40 C.F.R. 35, 116,”, insert “122”.

After “130, 131,”, insert “133”.

After “136,”, insert “141”.

Page 1

RELATES TO

Line 8

After “42 U.S.C. 6901-“, insert “6992k”.

Delete “7000”.

Page 1

STATUTORY AUTHORITY

Line 10

After “224.10-100”, insert “(5), 224.10-110”.

Page 1
NECESSITY, FUNCTION, AND CONFORMITY
Line 13

After “224.10-100”, insert “(5)”.

Page 3
Section 1(2)
Line 2

After “Administrator”, insert the following:
is defined by 40 C.F.R. 122.2, effective July 1, 2008.
Delete the remainder of subsection (2).

Page 4
Section 1(4)
Line 11

After “Alternative effluent limitations”, insert the following:
is defined by 40 C.F.R. 125.71(a), effective July 1, 2008.
Delete the remainder of subsection (4).

Page 4
Section 1(5)(b)1.b.
Lines 1 and 2

After “lot of facility”, insert “(c)”.
Delete “2.”.

Page 4
Section 1(5)(b)2.
Line 3

After “animal feeding operation”, insert “because”.
Delete “if”.

Page 4
Section 1(6)
Lines 16 and 17

After “401 KAR”, insert “Chapters”.
Delete “Chapter”.

Page 5
Section 1(9)
Line 4

After “Aquaculture project”, insert the following:
is defined by 40 C.F.R. 122.25(b)(1), effective July 1, 2008.
Delete the remainder of subsection (9).

Pages 6 and 7

Sections 1(12)(b) and 1(12)(b)1.

Lines 23 and 1

After “all other purposes: 1.”, capitalize the first letter of “schedules”.

Page 7

Section 1(13)

Line 7

After “or BOD5””, insert the following:

is defined by 40 C.F.R. 133.101(d), effective July 1, 2008.

Delete the remainder of subsection (13).

Page 9

Section 1(20)

Line 4

After “their life span,”, insert “due”.

Page 10

Section 1(23)

Line 12

After “animal feeding operation””, insert “or “CAFO””.

Page 12

Section 1(26)

Line 22

After “oil and grease,”, insert “e. coli”.

Page 15

Section 1(37)

Line 8

After “other wastes and”, insert “that”.

Delete “which”.

Page 16

Section 1(41)

Line 8

After “limitations guideline””, insert the following:

is defined by 40 C.F.R. 122.2, effective July 1, 2008.

Delete the remainder of subsection (41).

Page 16

Section 1(42)

Line 14

After “Protection Agency””, insert ““EPA””.

Delete ““EPA or””.

Page 22

Section 1(56)

Line 9

After “ “Inflow””, insert the following:
is defined by 40 C.F.R. 35.905, effective July 1, 2008.
Delete the remainder of subsection (56).

Page 22

Section 1(55)

Line 7

After “ “Infiltration””, insert the following:
is defined by 40 C.F.R. 35.905, effective July 1, 2008.
Delete the remainder of subsection (55).

Page 23

Section 1(58)

Line 1

After “40 C.F.R. 403.3(k)”, insert “, effective July 1, 2008”.

Page 25

Section 1(69)

Line 9

After “40 C.F.R. 122.23(b)(c)”, insert “, effective July 1, 2008”.

Page 25

Section 1(71)(c)

Line 16

After “veal calves. Cattle”, insert “includes”.
Delete “shall include”.

Page 25

Section 1(71)(d)

Line 18

After “(d)”, insert the following:
2,500 swine each weighing fifty-five (55) pounds or more; (e)
After “10,000 swine each weighing”, insert “less than”.
After “(55) pounds)”, delete “or more”.

Renumber remaining paragraphs accordingly.

Page 26

Section 1(72)

Line 4

After “40 C.F.R.”, insert the following:
122.23(b)(4), effective July 1, 2008
Delete “122.23(4)”.

Page 28

Section 1(77)

Line 2

After “40 C.F.R. 122.23(b)(5)”, insert “, effective July 1, 2008”.

Page 28

Section 1(81)

Line 22

After “40 C.F.R. 122.26(b)(5)”, insert “, effective July 1, 2008”.

Page 30

Section 1(84)

Line 12

After “defined by 40”, insert the following:

C.F.R. 122.23(b)(6), effective July 1, 2008

Delete “CFR 122.23(6)”.

Page 32

Section 1(91)

Lines 10 and 11

After “40 C.F.R. 122.26(b)(8)”, insert “, effective July 1, 2008”.

Page 33

Section 1(93)

Line 6

After “or “NPDES””, insert the following:

is defined by 40 C.F.R. 122.2, effective July 1, 2008.

Delete the remainder of subsection (93).

Page 33

Section 1(94)

Lines 9 through 12

After “or “standard””, insert the following:

is defined by 40 C.F.R. 403.3(l), effective July 1, 2008

Delete the following:

means a federal regulation containing pollutant discharge limits promulgated by the U.S. EPA in accordance with 33 U.S.C. 1311(b) and (c) that applies to industrial users

Page 36

Section 1(98)

Lines 7 through 10

After “(98)”, delete the following:

"Nonconventional pollutant" means a pollutant not considered to be a conventional pollutant, including a priority pollutant established in 401 KAR 5:060.

(99)

Renumber remaining subsections (100) through (126) accordingly.

Page 37

Section 1(103)

Line 16

After "waters of the", capitalize the first letter of "commonwealth".

Line 19

After "waters of the", capitalize the first letter of "commonwealth".

After "waters of the", capitalize the first letter of "commonwealth" (second time).

Page 38

Section 1(107)

Lines 9 through 11

After "'Owner" means a person", insert the following:

who has legal ownership of a facility or activity regulated pursuant to 401 KAR Chapter 5

Delete the remainder of subsection (107).

Page 38

Section 1(109)(a)

Line 22

After "operate a facility;", insert "or".

Page 39

Section 1(114), amended to (113)

Line 17

After " "POTW treatment plant"", insert the following:

is defined by 40 C.F.R. 403.3(r), effective July 1, 2008.

Delete the remainder of subsection (114).

Page 40

Section 1(115)

Line 1

After "40 C.F.R. 403.3(s)", insert ", effective July 1, 2008".

Page 40

Section 1(116), amended to (115)

Line 12

After " "Pretreatment requirement"", insert the following:

is defined by 40 C.F.R. 403.3(t), effective July 1, 2008.

Delete the remainder of subsection (116).

Page 40
Section 1(118)
Lines 19-22

After “responsibility” means”, insert the following:

personal, first hand responsibility to conduct or actively oversee and direct procedures and practices necessary to ensure that the wastewater treatment plant or wastewater collection system is operated in accordance with accepted practices and with KRS Chapter 224 and 401 KAR Chapters 5 and 11.

Delete the following:

having the authority to conduct the procedures and practices necessary to ensure that the wastewater system or any portion thereof is operated in accordance with accepted practices, laws, and administrative regulations of the commonwealth, or to supervise others in conducting these practices.

Page 40
Section 1(119)
Line 23

After “40 C.F.R. 122.2”, insert “, effective July 1, 2008”.

Page 41
Section 1(120)
Lines 8 and 9

After “40 C.F.R. 122.23(b)(8)”, insert “, effective July 1, 2008”.

Page 41
Section 1(124)
Line 23

After “40 C.F.R. 141.2”, insert “, effective July 1, 2008”.

Page 42
Section 1(126)
Line 7

After “after terminating operations.”, insert the following:

(126) “Recurring discharge” means, as it relates to a sewer system overflow, a discharge that occurs two (2) or more times in a twelve (12) month period.

Page 44
Section 1(134)
Line 16

After “401 KAR”, insert “Chapters”.

Delete “Chapter”.

Page 45

Section 1(140)

Line 14

After “ “Sewage sludge””, insert the following:
is defined by 40 C.F.R. 122.2, effective July 1, 2008.
Delete the remainder of subsection (140).

Page 45

Section 1(141)

Line 21

After “(2) building sewers”, insert “that”.
Delete “which”.

Page 45

Section 1(142)

Line 23

After “proposed construction project”, insert “that”.
Delete “which”.

Page 46

Section 1(145)

Line 5

After “40 C.F.R. 403.3(v)”, insert “, effective July 1, 2008”.

Page 47

Section 1(146)

Line 6

After “40 C.F.R. 122.27(b)(1)”, insert “, effective July 1, 2008”.

Page 47

Section 1(147)

Line 15

After “source for groundwater”, insert a period.
Delete “and”.
Capitalize the first letter of “it”.

Page 47

Section 1(148)

Lines 17 and 18

After “5:060 through”, delete “401 KAR”.

Pages 47 and 48

Section 1(149)

Lines 21 through 7

After “ “Sludge requirements””, insert the following:
is defined by 40 C.F.R. 403.7(a)(ii), effective July 1, 2008.

Delete the remainder of subsection (149) through paragraph (d) on page 48, line 7.

Page 48

Section 1(150)

Line 10

After “defined by 40”, insert the following:

C.F.R. 122.23(b)(9), effective July 1, 2008

Delete “CFR 122.23(9)”.

Page 49

Section 1(155)

Line 12

After “ “Storm water””, insert the following:

is defined by 40 C.F.R. 122.26(b)(13), effective July 1, 2008.

Delete the remainder of subsection (155).

Page 49

Section 1(156)

Lines 14 and 15

After “40 C.F.R. 122.26(b)(14)”, insert “, effective July 1, 2008”.

Page 52

Section 1(157)

Line 17

After “40 C.F.R. 122.26(b)(15)”, insert “, effective July 1, 2008”.

Page 52

Section 1(157)(a)

Line 18

After “of the Commonwealth”, insert “of Kentucky”.

Page 55

Section 1(160)

Line 3

After “waters of the”, capitalize the first letter of “commonwealth”.

Page 55

Section 1(161)

Line 11

After “or TDS””, insert the following:

is defined by 40 C.F.R. 122.2, effective July 1, 2008.

Delete the remainder of subsection (161).

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Section 1(163)

Line 17

After “specified in 40 C.F.R.”, delete “Part”.

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Section 1(164)

Lines 18 and 19

After “5:060 through”, delete “401 KAR”.

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Section 1(167)

Line 2

After “ “Upset””, insert the following:
is defined by 40 C.F.R. 122.41(n), effective July 1, 2008.
Delete the remainder of subsection (167).

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Section 1(177)

Line 7

After “ “Wetlands””, insert the following:
is defined by 40 C.F.R. 122.2, effective July 1, 2008.
Delete the remainder of subsection (177).